EXHIBIT B

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15.804-2 Requiring certified cost or pricing data.

(a)(1) Except as provided in 15.804-3, certified cost or pricing data are required before accomplishing any of the following actions:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts) expected to exceed $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for contracts awarded after December 5, 1990, expected to exceed $500,000.

(ii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) when the modification involves a price adjustment expected to exceed $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for modifications involving a price adjustment expected to exceed $500,000, if the contract includes or has been modified in accordance with 15.804-2(a)(2) to include the $500,000 threshold. Price adjustment amounts shall consider both increases and decreases. (For example, a $30,000 modification resulting from a reduction of $70,000 and an increase of $40,000 is a pricing adjustment exceeding $100,000, and a $150,000 modification resulting from a reduction of $350,000 and an increase of $200,000 is a pricing adjustment exceeding $500,000.) This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

(iii) The award of a subcontract at any tier, if the contractor and each higher tier subcontractor have been required to furnish certified cost or pricing data, when the subcontract is expected to exceed $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for subcontracts expected to exceed $500,000 if the contract includes, or has been modified to include, the $500,000 threshold per 15.804-2(a)(2). (But see 15.804-3(i).)

(iv) The modification of any subcontract covered by subdivision (a)(1)(iii) of this subsection, when the price adjustment (see subdivision (a)(1)(ii) of this subsection) is expected to exceed $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for subcontracts when the modification involves a price adjustment expected to exceed $500,000 if the contract includes or has been modified to include the $500,000 threshold per 15.804-2(a)(2).

(2) Department of Defense, National Aeronautics and Space Administration, and Coast Guard contracting officers shall, if requested by the contractor, modify contracts entered into on or before December 5, 1990, to incorporate the $500,000 threshold without requiring consideration. Contracting officers shall comply with contractors' requests for the threshold increase unless a contracting officer determines in accordance with the criteria at 15.804-2(a)(3) that a change in the threshold is not in the best interests of the Government. The requirement to submit certified cost or pricing data shall be determined by the threshold in the contract at the time of agreement on price regardless of when an undefinitized modification, change order or subcontract is issued.

(3) The contracting officer may obtain certified cost or pricing data for pricing actions below the pertinent threshold in subparagraph (a)(1) of this subsection provided the action exceeds the small purchase limitation. For such pricing actions, the instances in which certified cost or pricing data and inclusion of defective pricing clauses would be justified should be few; however, the contracting officer shall give special consideration to requiring certified cost or pricing data for such pricing actions if the offeror, contractor, or subcontractor—

(i) Has been the subject of recent or recurring, and significant findings of defective pricing;

(ii) Currently has significant deficiencies in its cost estimating systems; or

(iii) Has recently been indicted for, convicted of, or the subject of an administrative or judicial finding of fraud regarding its cost estimating systems or cost accounting practices.

The contracting officer shall document the file to justify the requirement for cost or pricing data not required by regulation. The documentation shall include the contracting officer's written finding that certified cost or pricing data are necessary, the facts supporting that finding, and the approval of the finding at a level above the contracting officer.

(4) The contracting officer shall not require certified cost or pricing data when awarding a contract below the small purchase limitation at 13.000.

(5) When certified cost or pricing data are not required, the contracting officer may request partial or limited data to determine a reasonable price (see 15.804-6(a)(2)).

(b) When certified cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The cost or pricing data.

(2) A certificate of current cost or pricing data, in the format specified in 15.804-4, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of final agreement on price.

(c) The requirements of this section also apply to contracts entered into by the head of an agency on behalf of a foreign government.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1741, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 53 FR 10829, Apr. 1, 1988; 56 FR 67413, Dec. 30, 1991; 57 FR 60579, Dec. 21, 1992]

15.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) *General.* Except as provided in paragraphs (b) and (c) below, the contracting officer shall not require submission or certification of cost or pricing data when the contracting officer determines that prices are—

(1) Based on adequate price competition (see paragraph (b) below);

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public (see paragraph (c) below); or

(3) Set by law or regulation (see paragraph (d) below).

(b) *Adequate price competition.* (1) Price competition exists if—

(i) Offers are solicited;

(ii) Two or more responsible offerors that can satisfy the Government's requirements submit priced offers responsive to the solicitation's expressed requirements; and

(iii) These offerors compete independently for a contract to be awarded to the responsible offeror submitting the lowest evaluated price.

(2) If price competition exists, the contracting officer shall presume that it is adequate unless—

(i) The solicitation is made under conditions that unreasonably deny to one or more known and qualified offerors an opportunity to compete;

(ii) The low offeror has such a decided advantage that it is practically immune from competition; or

(iii) There is a finding, supported by a statement of the facts and approved at a level above the contracting officer, that the lowest price is unreasonable.

(3) A price is *based on* adequate price competition if it results directly from price competition or if price analysis alone clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or substantially the same items purchased in comparable quantities, terms, and conditions under contracts that resulted from adequate price competition.

(c) *Established catalog or market prices.* A proposal is exempt from the requirement for submission of certified cost or pricing data if the prices are, or are based on, established catalog or established market prices of commercial items sold in substantial quantities to the general public. In order to qualify for this exemption, the terms of the proposed purchase, such as quantity and delivery requirements, should be sufficiently similar to those of the commercial sales that the catalog or market price will be fair and reasonable.

(1) *Established catalog prices* must be recorded in a form regularly maintained by the manufacturer or vendor. This form may be a catalog, price list, schedule, or other verifiable and established record. The record must (i) be published or otherwise available for customer inspection and (ii) state current or last sales price to a significant number of buyers constituting the general public (see subparagraph (5) below).

(2) *Established market prices* are current prices that (i) are established in the course of ordinary and usual trade between buyers and sellers free to bargain and (ii) can be substantiated by data from sources independent of the manufacturer or vendor.

(3) *Commercial items* are supplies or services regularly used for other than Government purposes and sold or traded to the general public in the course of normal business operations.

(4) An item is *sold in substantial quantities* only when the quantities regularly sold are sufficient to constitute a real commercial market. Nominal quantities, such as models, samples, prototypes, or experimental units, do not meet this requirement. For services to be sold in substantial quantities, they must be customarily provided by the offeror, using personnel regularly employed and equipment (if any is necessary) regularly maintained solely or principally to provide the services.

(5) The *general public* is a significant number of buyers other than the Government or affiliates of the offeror; the item involved must not be for Government end use. For the purpose of this subsection 15.804-3, items acquired for *Government end use* include items acquired for foreign military sales.

(6) A price is *based on* a catalog or market price only if the item being purchased is sufficiently similar to the catalog- or market-priced commercial item to ensure that any difference in prices can be identified and justified without resort to cost analysis.

(7) If an item is substantially similar to a commercial item for which there is an established catalog or market price at which substantial quantities are sold to the general public, but the price proposed is not *based on* this catalog or market price (see subparagraph (6) above), the contracting officer may, if doing so will result in a fair and reasonable price, limit any requirement for cost or pricing data to those data that pertain to the differences between the items. When the difference between the catalog or market price of an item or items and the proposed total contract price exceeds the pertinent threshold set forth at 15.804-2(a)(1), the contracting officer shall require submission of certified cost or pricing data to identify and justify that difference unless an exemption or waiver is granted.

(8) Even though there is an established catalog or market price of commercial items sold in substantial quantities to the general public, the contracting officer may require cost or pricing data if (i) the contracting officer makes a written finding that the price is not reasonable, including the facts upon which the finding is based, and (ii) the finding is approved at a level above the contracting officer.

(d) *Prices set by law or regulation.* A price set by law or regulation is exempt from the requirement for submission of certified cost or pricing data. Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws, are sufficient to establish the price.

(e) *Claiming and granting exemption.* To receive an exemption under paragraph (c) or (d) of this subsection, the offeror must ordinarily claim it on Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, when the total proposed amount exceeds the pertinent threshold set forth at 15.804-2(a)(1), and more than one catalog item for which an exemption is claimed exceeds $50,000. When an exemption is claimed for more than one item in a proposal, a separate SF 1412 is required for each item exceeding $50,000 except as otherwise provided in the solicitation. The contracting officer may grant an exemption and need not require the submission of SF 1412 when—

(1) The Government has acted favorably on an exemption claim for the same item or similar items within the past year. In that case, except as otherwise directed by the contracting officer, the offeror may furnish a copy of the prior claim and related Government action. The offeror must also submit a statement to the effect that to its knowledge since the prior submission, except as expressly set forth in the statement, there have been no changes in the catalog price or discounts, volume of actual sales, or the ratio of sales for Government end use to sales in other categories which would cause a cumulative change in price exceeding $25,000;

(2) Special arrangements for the submission of exemption claims have been made in anticipation of repetitive acquisitions of catalog items; or

(3) There is evidence, before solicitation, that the item has an acceptable established catalog or market price or a price set by law or regulation. Evidence may include (i) recent submissions by offerors or (ii) the contracting officer's knowledge of market conditions, prevailing prices, or sources.

(f) *Verification.* (1) When a prospective contractor requests exemption from submission of certified cost or pricing data, the contracting officer shall ensure that applicable criteria in either paragraph (c) or (d) above, as appropriate, are satisfied before issuing the exemption.

(2) SF 1412 lists three categories of sales related to the established catalog price of a commercial item sold in substantial quantities to the general public: A, Sales to the U.S. Government or to contractors for U.S. Government use; B, Sales at catalog price to the general public; and C, Sales to the general public at other than catalog price. Although *substantial quantities* cannot be precisely defined (see subparagraph (c)(4) above), the following guidelines are provided for determining whether exemption claims submitted under the catalog price provision of SF 1412 meet the *substantial quantities* criterion:

(i) Sales to the general public are normally regarded as substantial if (A) Category B and C sales are not negligible in themselves and comprise at least 55 percent of total sales of the item and (B) Category B sales comprise at least 75 percent of the total of Category B and C sales.

(ii) Sales to the general public are rarely considered substantial enough to grant an exemption if (A) Category B and C sales comprise less than 35 percent of total sales of the item or (B) Category B sales comprise less than 55 percent of the total of Category B and C sales.

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(iii) When percentages fall between those above, the contracting officer should analyze the individual situation in order to determine whether or not an exemption is justified.

(3) The contracting officer may verify or obtain verification (including audit or contract administration assistance) of the submitted data pertaining to catalog or market prices or prices set by law or regulation. Access to the prospective contractor's records is limited to access to the facts bearing directly on the exemption claimed. It does not extend to cost, profit, or other data relevant solely to the reasonableness of the catalog or proposed price.

(g) *Individual or class exemptions.* The chief of the contracting office may authorize individual or class exemptions for exceptional cases when the contracting officer recommends that an exemption should be made, even though the case does not strictly meet all the criteria for catalog- or market-price exemption. The quantity and prices of actual commercial sales compared with prices offered to the Government, and price relationships as influenced by prevailing trade practices, are the important factors for consideration. The Government's need and the prospective contractor's resistance are not appropriate considerations.

(h) *Price analysis.* Even though an item qualifies for exemption from the requirement for submission of certified cost or pricing data, the contracting officer shall make a price analysis to determine the reasonableness of the price and any need for further negotiation. Unless information is available from Government sources, it may be necessary to obtain from the prospective contractor information such as that regarding—

(1) The supplier's marketing system (e.g., use of jobbers, brokers, sales agencies, or distributors);

(2) The services normally provided commercial purchasers (e.g., engineering, financing, or advertising or promotion);

(3) Normal quantity per order; and

(4) Annual volume of sales to largest customers.

(i) *Waiver for exceptional cases.* The agency head (or, if the contract is with a foreign government or agency, the head of the contracting activity) may, in exceptional cases, waive the requirement for submission of certified cost or pricing data. The authorization for the waiver and the reasons for granting it shall be in writing. The agency head may delegate this authority. When the agency head or designee has waived the requirement for submission of certified cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to make available cost or pricing data for purposes of 15.804-2(a)(1)(iii). Consequently, award of any lower-tier subcontract expected to exceed the pertinent threshold set forth at 15.804-2(a)(1) requires the submission of certified cost or pricing data unless exempt or waived under this subsection 15.804-3.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1741, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 51 FR 2650, Jan. 17, 1986; 53 FR 10829, Apr. 1, 1988; 56 FR 67414, Dec. 30, 1991]

15.804-4 Certificate of Current Cost or Pricing Data.

(a) When certified cost or pricing data are required under 15.804-2, the contracting officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, shown below, and shall include the executed certificate in the contract file. The certificate states that the cost or pricing data are accurate, complete, and current as of the date the contractor and the Government agreed on a price. Only one certificate shall be required; the contractor shall submit it as soon as practicable after price agreement is reached.

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.801 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.804-2) submitted, either actually or by specific identification in writing, to the contracting officer or to the contracting officer's representative in support of ——————* are accurate, complete, and current as of ————**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm ——————————
Signature ——————————
Name ——————————
Title ——————————
Date of execution*** ——————————

*Identify the proposal, quotation, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

**Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

***Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(End of certificate)

(b) The certificate does not constitute a representation as to the accuracy of the contractor's judgment on the estimate of future costs or projections. It does apply to the data upon which the judgment or estimate was based. This distinction between fact and judgment should be clearly understood. If the contractor had information reasonably available at the time of agreement showing that the negotiated price was not based on accurate, complete, and current data, the contractor's responsibility is not limited by any lack of personal knowledge of the information on the part of its negotiators.

(c) Closing or cutoff dates should be included as part of the data submitted with the proposal. Certain data may not be reasonably available before normal periodic closing dates (e.g., actual indirect costs). Before agreement on price, the contractor shall update all data as of the latest dates for which information is reasonably available. Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Government will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

(d) Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the contractor's proposal.

(e) Even though the solicitation may have requested cost or pricing data, the contracting officer shall not require a Certificate of Current Cost or Pricing Data when the resulting award is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation (see 15.804-3(a) through (d)).

(f) The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used does not require recertification.

(g) Contracting officers shall not require certification at the time of agreement for data supplied in support of forward pricing rate agreements (see 15.809) or other advance agreements. When a forward pricing rate agreement or other advance agreement is used in partial support of a later contractual action that requires a certificate, the price proposal certificate shall cover (1) the data originally supplied to support the forward pricing rate agreement or other advance agreement and (2) all data required to update the price proposal to the time of agreement on contract price.

(h) Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring certified cost or pricing data if (1) the total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at 15.804-2(a)(1) or (2) the partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at 15.804-2(a)(1) (see 49.105(c)(15)).

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1741, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 56 FR 67414, Dec. 30, 1991; 57 FR 60610, Dec. 21, 1992] subcontract to a lower priced subcontractor (or does not subcontract for the work), any adjustment in the prime contract price due to defective subcontract data is limited to the difference (plus applicable indirect cost and profit markups) between (i) the subcontract price used for pricing the prime contract, and (ii) either the actual subcontract price or the actual cost to the contractor, if not subcontracted, provided the data on which the actual subcontract price is based are not themselves defective.

(2) Under cost-reimbursement contracts and under all fixed-price contracts except (i) firm-fixed-price contracts, and (ii) contracts with economic price adjustment, payments to subcontractors that are higher than they would be had there been no defective subcontractor cost or pricing data shall be the basis for disallowance or nonrecognition of costs under the clauses prescribed in 15.804-8. The Government has a continuing and direct financial interest in such payments that is unaffected by the initial agreement on prime contract price.

15.804-8 Contract clauses.

(a) *Price Reduction for Defective Cost or Pricing Data.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215-22, Price Reduction for Defective Cost or Pricing Data, in solicitations and contracts when it is contemplated that cost or pricing data will be required from the contractor or any subcontractor (see 15.804-2).

(b) *Price Reduction for Defective Cost or Pricing Data—Modifications.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215-23, Price Reduction for Defective Cost or Pricing Data—Modifications, in solicitations and contracts when (1) it is contemplated that cost or pricing data will be required from the contractor or any subcontractor (see 15.804-2) for the pricing of contract modifications, and (2) the clause prescribed in paragraph (a) of this subsection has not been included.

(c) *Subcontractor Cost or Pricing Data.* The contracting officer shall insert the clause at 52.215-24, Subcontractor Cost or Pricing Data, in solicitations and contracts when the clause prescribed in paragraph (a) above is included.

(d) *Subcontractor Cost or Pricing Data—Modifications.* The contracting officer shall insert the clause at 52.215-25, Subcontractor Cost or Pricing Data—Modifications, in solicitations and contracts when the clause prescribed in paragraph (b) above is included.

(e) *Termination of Defined Benefit Pension Plans.* The contracting officer shall insert the clause at 52.215-27, Termination of Defined Benefit Pension Plans, in all solicitations and contracts for which it is anticipated that certified cost or pricing data will be required and for which any preaward or postaward cost determinations will be subject to Subpart 31.2.

15.805 Proposal analysis.

15.805-1 General.

(a) The contracting officer, exercising sole responsibility for the final pricing decision, shall, as appropriate, coordinate a team of experts and request and evaluate the advice of specialists in such fields as contracting, finance, law, contract audit, packaging, quality control, engineering traffic management, and contract pricing. The contracting officer should have appropriate specialists attend the negotiations when complex problems involving significant matters will be addressed. The contracting officer may assign responsibility to a negotiator or price analyst for (1) determining the extent of specialists' advice needed and evaluating that advice, (2) coordinating a team of experts, (3) consolidating pricing data and developing a prenegotiation objective (see 15.807), and (4) conducting negotiations.

(b) When cost or pricing data are required, the contracting officer shall make a cost analysis to evaluate the reasonableness of individual cost elements. In addition, the contracting officer should make a price analysis to ensure that the overall price offered is fair and reasonable. When cost or pricing data are not required, the contracting officer shall make a price analysis to ensure that the overall price offered is fair and reasonable.

(c) The contracting officer shall require prospective contractors to perform (1) price analysis for all significant proposed subcontracts and purchase orders, and (2) cost analysis when the prospective subcontractor is required to submit cost or pricing data or the contractor is unable to perform an adequate price analysis (see 15.806(a)).

15.805-2 Price analysis.

The contracting officer is responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price. One or more of the following techniques may be used to perform price analysis:

(a) Comparison of proposed prices received in response to the solicitation.

(b) Comparison of prior proposed prices and contract prices with current proposed prices for the same or similar end items. To provide a suitable basis for comparison, the contracting officer should consider differences in specifications, quantities ordered, time for delivery, Government-furnished materials, experienced trends of improvement in production efficiency, and when prior acquisitions occurred. Any comparison will not be valid unless the reasonableness of the prior price was established. The comparison may not detect an unreasonable proposed price unless changes in the general level of business in the industry which may impact prices are taken into account.

(c) Application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.

(d) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

(e) Comparison of proposed prices with independent Government cost estimates (see 15.803(b)).

15.805-3 Cost analysis.

The contracting officer shall, as appropriate, use the techniques and procedures outlined in paragraphs (a) through (f) below to perform cost analysis:

(a) Verification of cost or pricing data and evaluation of cost elements, including—

(1) The necessity for and reasonableness of proposed costs, including allowances for contingencies;

(2) Projection of the offeror's cost trends, on the basis of current and historical cost or pricing data;

(3) A technical appraisal of the estimated labor, material, tooling, and facilities requirements and of the reasonableness of scrap and spoilage factors; and

(4) The application of audited or negotiated indirect cost rates (see Subpart 42.7), labor rates, and cost of money or other factors.

(b) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, the contracting officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed, complex equipment, the contracting officer should make a trend analysis of basic labor and materials even in periods of relative price stability.

(c) Comparison of costs proposed by the offeror for individual cost elements with—

(1) Actual costs previously incurred by the same offeror;

(2) Previous cost estimates from the offeror or from other offerors for the same or similar items;

(3) Other cost estimates received in response to the Government's request;

(4) Independent Government cost estimates by technical personnel; and

(5) Forecasts or planned expenditures.

(d) Verification that the offeror's cost submissions are in accordance with the contract cost principles and procedures in Part 31 and, when applicable, the requirements and procedures in Part 30, Cost Accounting Standards.

(e) Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or identified in writing by the contractor. If there are such data, the contracting officer shall attempt to obtain them and negotiate, using them or making satisfactory allowance for the incomplete data.

(f) Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs.

15.805-4 Technical analysis.

When cost or pricing data are required, the contracting officer should generally request a technical analysis of proposals, asking that requirements, logistics, or other appropriate qualified personnel review and assess, as a minimum—

(a) The quantities and kinds of material proposed;

(b) The need for the number and kinds of labor hours and the labor mix;

(c) The special tooling and facilities proposed;

(d) The reasonableness of proposed scrap and spoilage factors; and

(e) Any other data that may be pertinent to the cost or price analysis.

15.805-5 Field pricing support.

(a)(1) When cost or pricing data are required, contracting officers shall request a field pricing report (which may include an audit review by the cognizant contract audit activity) before negotiating any contract or modification resulting from a proposal in excess of $500,000, except as otherwise authorized under agency procedures, unless information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost or price. Requests for field pricing support should be tailored to ask for minimum essential information needed to ensure a fair and reasonable price. Information of the type described in subdivisions (a)(1)(i) through (a)(1)(vi) of this subsection, which is often available to the contracting officer from the Administrative Contracting Officer or from the cognizant auditor, may be useful in determining the extent of any field pricing support that is needed—

(i) An engineering determination of the level of effort required for research and development or study contracts;

(ii) Audited cost information from contract awards in process or recently negotiated contracts;

(iii) Analyzed data on proposed subcontract items which constitute the major portion of the prime contract price proposal;

(iv) Prices of standard commercial items which constitute the major portion of the prime contract price proposal;

(v) Special forward pricing formulae or rates prescribed in an existing advance agreement or forecasted overhead rates;

(vi) Current labor rates, overhead rates, loading factors, per diem rates, and actual costs and labor hours for production lots. No single category of information is necessarily sufficient by itself; for example, information on the rates for labor and overhead would normally require data concerning the base elements—labor hours, material costs, etc.— to

15.807 Prenegotiation objectives.

(a) The process of determining prenegotiation objectives helps the contracting officer to judge the overall reasonableness of proposed prices and to negotiate a fair and reasonable price or cost and fee. In setting the prenegotiation objectives, the contracting officer shall analyze the offeror's proposal, taking into account the field pricing report, if any; any audit report and technical analysis whether or not part of a field pricing report; and other pertinent data such as independent Government cost estimates and price histories. This process may include fact-finding sessions with the offeror when the contracting officer deems appropriate.

(b) The contracting officer shall establish prenegotiation objectives before the negotiation of any pricing action. The scope and depth of the analysis supporting the objectives should be directly related to the dollar value, importance, and complexity of the pricing action. When cost analysis is required, the analysis shall address (1) the pertinent issues to be negotiated, (2) the cost objectives, and (3) a profit or fee objective.

(c) The Government's cost objective and proposed pricing arrangement directly affect the profit or fee objective. Because profit or fee is only one of several interrelated variables, the contracting officer shall not agree on profit or fee without concurrent agreement on cost and type of contract. Specific agreement on the exact values or weights assigned to individual profit-analysis factors (see 15.905) is not required during negotiations and should not be attempted.

15.808 Price negotiation memorandum.

(a) At the conclusion of each negotiation of an initial or revised price, the contracting officer shall promptly prepare a memorandum of the principal elements of the price negotiation. The memorandum shall be included in the contract file and shall contain the following minimum information:

(1) The purpose of the negotiation.

(2) A description of the acquisition, including appropriate identifying numbers (e.g., RFP No.).

(3) The name, position, and organization of each person representing the contractor and the Government in the negotiation.

(4) The current status of the contractor's purchasing system when material is a significant cost element and the current status of other contractor systems (e.g., estimating, accounting, and compensation) to the extent that these additional systems affected and were considered in the negotiation.

(5) If certified cost or pricing data were required, the extent to which the contracting officer—

(i) Relied on the cost or pricing data submitted and used them in negotiating the price; and

(ii) Recognized as inaccurate, incomplete, or noncurrent any cost or pricing data submitted; the action taken by the contracting officer and the contractor as a result; and the effect of the defective data on the price negotiated.

(6) If cost or pricing data were not required in the case of any price negotiation exceeding the thresholds set forth at 15.804-2(a)(1), the exemption or waiver used and the basis for claiming or granting it.

(7) If certified cost or pricing data were required by the contracting officer under 15.804-2(a)(2), the rationale for such requirement.

(8) A summary of the contractor's proposal, the field pricing report recommendations, and the reasons for any pertinent variances from the field pricing report recommendations. Where the determination of price reasonableness is based on cost analysis, the summary shall address the amount of each major cost element: (i) Proposed by the contractor, (ii) recommended by the field or other pricing assistance report (if any), (iii) contained in the Government's negotiation objective, and (iv) considered negotiated as a part of the price.

(9) The most significant facts or considerations controlling the establishment of the prenegotiation price objective and the negotiated price including an explanation of any significant differences between the two positions. To the extent such direction is received, the price negotiation memorandum (PNM) shall discuss and quantify the impact of direction given by Congress, other agencies, and higher level officials (i.e., officials who would not normally exercise authority during the award and review process for the instant contract action) if the direction has had a significant effect on the action.

(10) The basis for determining the profit or fee prenegotiation objective and the profit or fee negotiated.

(b) Whenever a field pricing report has been submitted, the contracting officer shall forward a copy of the price negotiation memorandum (PNM) to the cognizant audit office and a copy to the cognizant administrative contracting officer. When appropriate, information on how the advisory services of the field pricing support team can be made more effective should be provided separately.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1741, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 52 FR 19803, May 27, 1987; 55 FR 52791, Dec. 21, 1990; 56 FR 67414, Dec. 30, 1991]

CODE OF FEDERAL REGULATIONS
TITLE 48--FEDERAL ACQUISITION REGULATIONS SYSTEM
CHAPTER 1--FEDERAL ACQUISITION REGULATION
SUBCHAPTER F--SPECIAL CATEGORIES OF CONTRACTING
PART 38--FEDERAL SUPPLY SCHEDULE CONTRACTING
SUBPART 38.1--FEDERAL SUPPLY SCHEDULE PROGRAM
38.102 TYPES OF FEDERAL SUPPLY SCHEDULES.

38.102-2 Multiple-award schedules.

(a) Multiple-award schedules are based on negotiated contracts established with more than one supplier for delivery of comparable commercial supplies or services. All responsible firms may submit offers in response to a solicitation for multiple award schedule contracts. Contracts are awarded to firms supplying the same generic types of items or services at varying prices for delivery within the same geographic areas.

(b) These contracts are appropriate when--

(1) It is not practical to draft specifications or other descriptions for the required supplies or services and there are multiple suppliers able to furnish similar commercial supplies or services (either established catalogs or market prices, or cost or pricing data will be used as a basis for determining price reasonableness); or

(2) Selectivity is necessary for ordering offices to meet their varying needs.

(c) Prices under the multiple-award schedule program are based on discounts from commercial price lists. Contracts are awarded after the schedules contracting officer determines that the prices, terms, and conditions offered are fair and reasonable. Orders placed by ordering offices in accordance with 8.405-1 will result in the lowest overall cost alternative to meet the needs of the Government (see 6.102(d)(3).)

(d) Multiple-award schedule contractors are required to prepare and distribute price lists and catalogs that must be used with the schedule to prepare orders.

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PART 38--FEDERAL SUPPLY SCHEDULE CONTRACTING

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

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